

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 183 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and  
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

C D DOSHI FAMILY TRUST

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Appearance:

MR MANISH R BHATT for Petitioner  
SERVED for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE R.R.JAIN

Date of decision: 18/07/96

ORAL JUDGEMENT

The Tribunal has referred the following question for the opinion of this Court under Section 256 (1) of the Income Tax Act, 1961 :

"Whether the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales

tax liability pertaining to the last quarter is paid within the time stipulated for filing of return under section 139 (1) the provisions of section 43B cannot be made applicable ?"

2. The question pertains to allowable deduction in view of proviso to section 43 (B) of the Income Tax Act, 1961 which has been inserted with effect from 1st April, 1988.

3. This Court, in the case of C.I.T. vs. CHANDULAL VENICHAND reported in 209 ITR 7 considered the effect of insertion of first proviso to section 43.B of the Act and has held that the proviso is retrospective in operation. Hence, the question referred to this Court is covered by the said decision, and, therefore, it is required to be answered against the Revenue and in favour of the assessee.

4. We, accordingly, answer the question against the Revenue and in favour of the assessee. No order as to costs.